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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BARRY S. JAMESON,
Plaintiff,
v.

CASE NO. 1:03-cv-5593-LJO-MJS (PC)
FINDINGS AND RECOMMENDATION FOR
DISMISSAL OF CERTAIN OF PLAINTIFF'S
CLAIMS
(ECF Nos. 62 and 67)

SCOTT RAWERS, et al.,
Defendants.

I. INTRODUCTION

Plaintiff Barry S. Jameson ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.¹ Plaintiff initiated this action on May 12, 2003. (Compl., ECF No. 1.) He has been granted leave to amend his complaint four times—three times on his own motion and once at the Court's request. Plaintiff filed a Fifth Amended Complaint on April 20, 2006. (Fifth Am. Compl., ECF No. 31.) On March 9, 2011, after reviewing Plaintiff's Fifth Amended Complaint, the Court ordered Plaintiff to either file a Sixth Amended Complaint or notify the Court of his willingness to proceed only on his Eighth Amendment medical care claim against Defendants Rees and Perry. (Order, ECF No. 62.) Plaintiff has since notified the Court of his willingness to proceed only on the Eighth Amendment medical care claim against

¹ Plaintiff's Fifth Amended Complaint included three additional Plaintiffs. However, the Court severed the other Plaintiffs' claims leaving Plaintiff Jameson as the only plaintiff in this action.

1 Defendants Rees and Perry. (Notice, ECF No. 67.) Accordingly, all claims in Plaintiff's
2 Fifth Amended Complaint except for his Eighth Amendment medical care claim against
3 Defendants Rees and Perry should now be dismissed.

4 **II. ANALYSIS**

5 The Court is required to screen complaints brought by prisoners seeking relief
6 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915(A)(a). The Court must dismiss a complaint or portion thereon if the prisoner has
8 raised claims that are legally "frivolous or malicious," that fail to state a claim upon which
9 relief may be granted, or that seek monetary relief from a defendant who is immune from
10 such relief. 28 U.S.C. § 1915(A)(b)(1),(2).

11 The Court reviewed Plaintiff's Fifth Amended Complaint pursuant to this statute and
12 issued a Screening Order on March 9, 2011. (Order, ECF No. 62.) In that Order, the
13 Court dismissed Claims Three through Six of Plaintiff's Fifth Amended Complaint because
14 they arose out of incidents at a different prison facility, were asserted against different
15 defendants, and were materially different in nature than those asserted in Plaintiff's other
16 claims. (Id. at 5.)

17 The Court then analyzed Plaintiff's Claims One and Two, in which Plaintiff alleged
18 that his Fourth, Fifth, Eighth, and Fourteenth Amendment rights were violated. (Id. at 6-
19 15.) The Court found that Plaintiff's Fourth and Fifth Amendment claims were futile and
20 that Plaintiff should not be permitted to assert them in an amended complaint. (Id. at 7-8.)
21 The Court further found that Plaintiff's Fourteenth Amendment claim did not arise out of
22 the same transaction, occurrence, or series of occurrences as the other claims in Plaintiff's
23 case and should be dismissed subject to Plaintiff's right to reassert those claims in a
24 different proceeding. (Id. at 8-9.)

25 The Court found that Plaintiff did assert an Eighth Amendment claim against certain
26 Defendants. (Id. at 9-15.) Plaintiff alleged that Defendants violated his Eighth Amendment
27 rights when they failed to protect him by releasing him into a prison yard with known
28 enemies and when Defendants failed to provide adequate medical treatment to Plaintiff for

1 injuries he sustained in the prison yard. (Fifth Am. Compl., ECF No. 31.) The Court found
2 that Plaintiff failed to include sufficient facts to state a claim for failure to protect under the
3 Eighth Amendment, but gave him leave to amend his claim. (Order, ECF No. 62 at 12.)
4 The Court found that Plaintiff did state an Eighth Amendment medical care claim against
5 Defendants Rees and Perry for deliberate indifference to Plaintiff's medical needs, but
6 Plaintiff stated no such claim against any other Defendants. (Id. at 15.)

7 The Court gave Plaintiff the option to proceed only against Defendants Rees and
8 Perry on his medical care claim or to file another amended complaint. Plaintiff has notified
9 the Court that he wishes to proceed only on his medical care claim against Defendants
10 Rees and Perry. (Notice, ECF No. 67.) Accordingly, Plaintiff's other claims should now be
11 dismissed.

12 **III. CONCLUSION**

13 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 14 1. Plaintiff's Eighth Amendment "failure to protect" claim in Counts One and Two
15 of his Fifth Amended Complaint be DISMISSED without prejudice;
- 16 2. Plaintiff's Fourth, Fifth, and Fourteenth Amendment claims in Counts One and
17 Two of his Fifth Amended Complaint be DISMISSED without prejudice;
- 18 3. Counts Three, Four, Five and Six of Plaintiff's Fifth Amended Complaint be
19 be DISMISSED without prejudice; and
- 20 4. Plaintiff be permitted to proceed on his Eighth Amendment claim, in Counts
21 One and Two of his Fifth Amended Complaint, that Defendants Rees and
22 Perry acted with deliberate indifference to Plaintiff's medical care needs, but
23 that all other medical care claims in Counts One and Two the Fifth Amended
24 Complaint be dismissed as against all other Defendants.

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
27 twenty (20) days after being served with these Findings and Recommendations, the parties
28 may file written objections with the Court. The document should be captioned "Objections

1 to Magistrate Judge's Findings and Recommendation." The parties are advised that failure
2 to file objections within the specified time may waive the right to appeal the District Court's
3 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 Dated: July 5, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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